

EXHIBIT B

1 KATHRYN A. STEBNER (SBN 121088)
2 DEENA K. ZACHARIN (SBN 141249)
3 **STEBNER AND ASSOCIATES**
4 A PROFESSIONAL LAW CORPORATION
5 870 Market Street, Suite 1212
6 San Francisco, CA 94102
7 Tel: (415) 362-9800
8 Fax: (415) 362-9801

9 KIRSTEN FISH (SBN 217940)
10 **NEEDHAM KEPNER & FISH LLP**
11 1960 The Alameda, Suite 210
12 San Jose, CA 95126
13 Tel: (408) 244-2166
14 Fax: (408) 244-7815

15 Attorneys for Plaintiff

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN FRANCISCO**

18 CHAN-HIE KIM, individually and as co-trustee
19 of the Chan-Hie Kim & Sook-Chung Kim Trust,

20 Plaintiff,

21 vs.

22 WELLS FARGO, N.A.; WELLS FARGO &
23 COMPANY; BANK OF AMERICA, N.A.;
24 BANK OF AMERICA CORPORATION;
25 VIRGEL MABINI; NANCY BECERRA; DOES
26 1-100, inclusive

27 Defendants.

ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

05/21/2021

Clerk of the Court

BY: JACKIE LAPREVOTTE
Deputy Clerk

CASE NO.

CGC-21-592111

COMPLAINT FOR DAMAGES

1. Financial Elder Abuse; and
2. Unlawful, Unfair and Deceptive Business Practices

JURY TRIAL DEMANDED

28 Plaintiff CHAN-HIE KIM, individually and as co-trustee of the Chan-Hie Kim & Sook-Chung
29 Kim Trust ("Plaintiff") based on information and belief and the investigation of counsel except for
30 information based on personal knowledge, hereby alleges as follows against WELLS FARGO,
31 N.A., WELLS FARGO & COMPANY, BANK OF AMERICA, N.A., BANK OF AMERICA
32 CORPORATION, VIRGEL MABINI, NANCY BECERRA, and DOES 1 through 100 (collectively
33 "Defendants"):

INTRODUCTION

1. This financial elder abuse case arises from a “tech support scam” that drained nearly all of Plaintiff’s life savings from his bank accounts with WELLS FARGO, N.A., WELLS FARGO & COMPANY and DOES 1-25 (collectively “WELLS FARGO”), and BANK OF AMERICA, N.A., BANK OF AMERICA CORPORATION and DOES 26-50 (collectively “BOFA”). Both WELLS FARGO’s and BOFA’s representatives had notice Plaintiff was potentially being scammed, and yet they did nothing to stop the ongoing scam and did not report the ongoing scam to the authorities. They also ignored the many government advisories they have received informing them to detect, deter and respond to the “red flags” of financial elder abuse. Rather, WELLS FARGO’s and BOFA’s ongoing and substantial assistance allowed this financial abuse scam against Plaintiff to be perpetrated by the tech support scammers, a scam from which both WELLS FARGO and BOFA would profit via their direct collection of fees from Plaintiff. After each time the 85-year-old Plaintiff was told by the scammers to send him money from September 2020 through December 2020, Plaintiff would walk into a WELLS FARGO branch or BOFA branch where said defendants would substantially assist in the scam by processing a total of at least 41 large wire transfers out of Plaintiff’s accounts as part of face-to-face transactions with the elderly Plaintiff. The misappropriated amount totaled over \$2,000,000.00. As a result of these transfers, both WELLS FARGO and BOFA would also directly profit by charging Plaintiff fees for each transfer. At all relevant times, Plaintiff was clearly an 85-year-old senior who was quite recognizable as an elderly person at WELLS FARGO’s and BOFA’s banks.

2. Elderly and disabled people, especially those who are dependent on others for assistance, are at foreseeable risk of financial elder abuse. Indeed, the Legislature enacted the California Elder Abuse and Dependent Adult Civil Protection Act (“EADAPCA”) (Welfare & Institutions Code §§ 15600 *et seq.*) because it recognized that “elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.” (Welf. & Inst. Code § 15600).

//

1 PARTIES

2 3. Plaintiff was at all times herein mentioned a resident of the County of San
3 Bernardino, State of California. At all times mentioned, Plaintiff was and elder within the meaning
4 of Welfare & Institutions Code §15610, *et seq.* Plaintiff's son, Alexis Kim, is the duly appointed
5 attorney-in-fact for Plaintiff, individually and as co-trustee of the Chan-Hie Kim & Sook-
6 Chung Kim Trust.

7 4. At all relevant times herein mentioned, Plaintiff, who is currently 85 years-old and
8 suffers from cognitive decline, is and was a senior citizen who was substantially more vulnerable
9 than other members of the public to the conduct of Defendants because of his age and disability, and
10 Plaintiff actually suffered substantial economic and emotional damage resulting from the conduct of
11 Defendants, as described below.

12 5. WELLS FARGO is engaged in, among other things, banking, and conducts
13 significant business in the State of California, including San Francisco County. Plaintiff is informed
14 and believes, and accordingly alleges that WELLS FARGO & COMPANY has its headquarters in
15 San Francisco, California.

16 6. Defendant VIRGEL MABINI is an individual over the age of 18 years and Plaintiff
17 is informed and believes, and accordingly alleges that VIRGEL MABINI was at all times herein
18 mentioned a resident of California. Plaintiff is informed and believes, and accordingly alleges that at
19 the time of the transactions at issue herein, VIRGEL MABINI was employed by WELLS FARGO
20 as a managing agent. WELLS FARGO and VIRGEL MABINI are collectively referred to herein as
21 "the WELLS FARGO DEFENDANTS."

22 7. BOFA is engaged in, among other things, banking, and conducts significant business
23 in the State of California, including San Francisco County. Plaintiff is informed and believes, and
24 accordingly alleges that BOFA has its headquarters in Charlotte, North Carolina.

25 8. Defendant NANCY BECERRA is an individual over the age of 18 years and Plaintiff
26 is informed and believes, and accordingly alleges that NANCY BECERRA was at all times herein
27 mentioned a resident of California. Plaintiff is informed and believes, and accordingly alleges that at

1 the time of the transactions at issue herein, NANCY BECERRA was employed by BOFA as a
2 managing agent. BOFA and NANCY BECERRA are collectively referred to herein as "the BOFA
3 DEFENDANTS."

4 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
5 associate or otherwise and the true involvement of those defendants named and sued herein as
6 DOES 1 through 100, and for that reason has sued said defendants by such fictitious names.
7 Plaintiff will seek leave to amend this complaint to reflect their true names when ascertained.
8 Plaintiff is informed and believes, and accordingly alleges that each of the defendants sued herein as
9 DOES 1 through 100 is responsible in some manner for the occurrences alleged in this action and
10 that these defendants proximately caused the harms suffered by Plaintiff.

11 10. Plaintiff is further informed and believes, and accordingly alleges that at all relevant
12 times each of the Defendants was the employer, employee, agent, servant, alter ego, principal, or
13 subsidiary of the other Defendants and at all times acted within the course and scope of such
14 employment or agency and with the knowledge and approval of said co-Defendants. In particular,
15 at all times material hereto, Defendants individually and through their officers, directors, and/or
16 managing agents, (i) had advance knowledge of the unfitness of their employees and employed said
17 employees with a conscious disregard of the rights and safety of others, (ii) authorized the wrongful
18 conduct alleged in this complaint, and/or (iii) were personally guilty of oppression, fraud, malice
19 and/or recklessness.

20 11. In doing the things alleged herein, DOES 1 through 25, and each of them, acted as
21 the employer, employee, agent, servant, alter ego, principal, or subsidiary, and alter-ego of co-
22 defendants the WELLS FARGO DEFENDANTS. At all times herein mentioned, DOES 1 through
23 25, and each of them, further acted as the partner, joint venturer, representative and/or co-
24 conspirator of one or more of the remaining defendants, and was acting within the course and scope
25 of such agency, partnership, joint venture, employment and/or conspiracy.

26 12. In doing the things alleged herein, DOES 26 through 50, and each of them, acted as
27 the employer, employee, agent, servant, alter ego, principal, or subsidiary, and alter-ego of co-

1 defendants the BOFA DEFENDANTS. At all times herein mentioned, DOES 26 through 50, and
2 each of them, further acted as the partner, joint venturer, representative and/or co-conspirator of one
3 or more of the remaining defendants, and was acting within the course and scope of such agency,
4 partnership, joint venture, employment and/or conspiracy.

5 13. In doing the things alleged herein, DOES 51 through 100, and each of them, acted as
6 the agent, servant, employee and alter-ego of co-defendant scammers engaged in a "tech support
7 scam." At all times herein mentioned, DOES 51 through 100, and each of them, further acted as the
8 partner, joint venturer, representative and/or co-conspirator of one or more of the remaining
9 defendants, and was acting within the course and scope of such agency, partnership, joint venture,
10 employment and/or conspiracy.

11 JURISDICTION AND VENUE

12 14. This Court has jurisdiction under Code of Civil Procedure § 410.10. Plaintiff's
13 damages exceed the jurisdictional minimum of this Court.

14 15. Venue is proper in San Francisco County under Code of Civil Procedure § 395.5
15 based upon the fact that Defendant WELLS FARGO & COMPANY's principal place of business is
16 in San Francisco County.

17 FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION

18 16. At the time of the transactions in question, transactions which took nearly all of
19 Plaintiff's life savings of over \$2,000,000.00, Plaintiff was 85 years old. Plaintiff's age is relevant
20 because aging brains such as his are particularly susceptible to deceptive and predatory practices.
21 According to a study funded by the National Institute of Aging, at least 22% of adults over 70 suffer
22 from cognitive decline which impacts financial management skills, results in poor decision-making
23 and leaves them particularly vulnerable to scams and other financial exploitation.

24 17. Plaintiff's condition and susceptibility to fraudulent tactics were not unusual for an
25 elder. Researchers at the University of Iowa have explored the problems older adults experience in
26 complex decision-making, even though these elders have not been diagnosed with any specific
27 neurological or psychiatric disease and technically have "capacity." This research has found that

1 many older Americans experience dramatic declines in cognitive abilities such as concentration,
2 problem-solving and decision-making. Such was the case with Plaintiff from approximately
3 September 2020 through December 2020, when the BOFA DEFENDANTS and the WELLS
4 FARGO DEFENDANTS knowingly wired collectively over \$2,000,000.00 of Plaintiff's money out
5 of his accounts, which nearly drained Plaintiff's retirement funds dry.

6 18. Plaintiff has been a customer of BOFA for over 30 years. His account at BOFA was
7 titled in his trust entitled the "Chan-Hie Kim & Sook-Chung Kim Trust." Prior to September 2020,
8 Plaintiff never engaged in any "suspicious transactions." In particular, neither co-trustee of the
9 Chan-Hie Kim & Sook-Chung Kim Trust regularly, or at all, engaged in any transactions where they
10 were depositing large amounts to the trust account, and then withdrawing large amounts from the
11 trust account by wire transfer. According to BOFA's own records, deposits into the trust account
12 with BOFA prior to the scam consisted almost entirely of small amounts, and checks drawn on the
13 account for expenses during that period were for approximately the same amount of money. Then,
14 after years of doing these regular, frugal transactions with BOFA, suddenly most of the transactions
15 out of the Chan-Hie Kim & Sook-Chung Kim Trust BOFA account from September 23, 2020 to
16 November 19, 2020 involved wire transfers of enormous amounts of cash totaling over
17 \$1,480,000.00.

18 19. The "tech support scam" against Plaintiff first started in September, 2020, when a
19 large warning message popped up on Plaintiff's computer saying his computer was hacked, not to
20 touch anything, and to call a phone number. When Plaintiff called the number the person who
21 answered said he was with Microsoft. The scammer said that Plaintiff's bank account at BOFA was
22 hacked and connected Plaintiff with another scammer who said he was with "Bank of America
23 Fraud Prevention department." The scammer said that Plaintiff's social security number and
24 birthdate were exposed and his retirement accounts at another institution were at risk. The scammer
25 told Plaintiff to transfer all of his retirement funds to BOFA in order to "rebuild" his retirement
26 accounts with new account numbers in order to protect his funds. Following his instructions,
27 Plaintiff transferred his retirement funds to BOFA in six huge increments, totaling over

\$2,000,000.00 being transferred into his BOFA trust account. Immediately following each large deposit from his investment account, Plaintiff entered a BOFA branch and requested huge wire transfers with no questions asked by the BOFA DEFENDANTS. The majority of the wire transfers were made from the Alta Loma branch of BOFA. The wire transfers and other large debits initiated at BOFA totaled \$1,481,400.00 over a short time period, as follows:

<u>DATE</u>	<u>TYPE OF TRANSACTION</u>	<u>AMOUNT</u>
09/23/20	Wire Transfer	-\$48,500.00
09/24/20	Wire Transfer	-\$48,500.00
09/25/20	Wire Transfer	-\$48,500.00
09/28/20	Wire Transfer	-\$48,500.00
09/29/20	Wire Transfer	-\$48,500.00
10/01/20	Wire Transfer	-\$48,500.00
10/02/20	Wire Transfer	-\$48,500.00
10/05/20	Wire Transfer	-\$48,500.00
10/06/20	Wire Transfer	-\$48,500.00
10/09/20	Wire Transfer	-\$48,500.00
10/13/20	Wire Transfer	-\$26,000.00
10/15/20	Wire Transfer	-\$49,400.00
10/19/20	Wire Transfer	-\$49,400.00
10/20/20	Wire Transfer	-\$49,400.00
10/21/20	Wire Transfer	-\$49,400.00
10/30/20	Wire Transfer	-\$49,400.00
11/02/20	Wire Transfer	-\$49,400.00
11/02/20	Wire Transfer	-\$49,400.00
11/03/20	Wire Transfer	-\$49,400.00

<u>DATE</u>	<u>TYPE OF TRANSACTION</u>	<u>AMOUNT</u>
11/03/20	Wire Transfer	-\$95,000.00
11/04/20	Wire Transfer	-\$49,400.00
11/04/20	Wire Transfer	-\$49,400.00
11/04/20	Wire Transfer	-\$49,400.00
11/04/20	Wire Transfer	-\$49,400.00
11/05/20	Wire Transfer	-\$49,400.00
11/05/20	Wire Transfer	-\$49,400.00
11/05/20	Wire Transfer	-\$95,000.00
11/6/20	Wire Transfer	-\$49,400.00
11/10/20	Wire Transfer	-\$39,400.00

20. Each time the scammers, DOES 51-100, instructed Plaintiff to wire more cash, this 85-year-old elderly customer walked into his long-time BOFA branch and met in person, face-to-face with a teller, who then would call over a bank manager to approve his wire transfers. On October 20, 2020, Plaintiff also made three suspicious withdrawals of \$5,000.00, \$5,000.00 and \$10,000.00 cash. Even though BOFA should have known that the elderly Plaintiff was potentially being scammed, they did nothing to stop the ongoing scam, and ignored the many government advisories they have received informing them to detect, deter and respond to the "red flags" of financial elder abuse. Therefore, the BOFA DEFENDANTS provided the scammers with substantial assistance by allowing Plaintiff to continue to wire away almost \$1,500,000.00 from BOFA until his life savings was nearly depleted with the assistance of BOFA employees. On top of this abject failure to protect their elderly customer, BOFA directly charged Plaintiff fees in the amount of \$30.00 to \$45.00 for each of the wire transfers to the scammers, DOES 51-100, totaling \$1,575.00 in fees directly taken from Plaintiff by BOFA as a part of the scam.

21. The scammer then instructed Plaintiff to open accounts at WELLS FARGO from which to make additional wire transfers. On September 30, 2020, an "Edeposit" was made in the

811 W. Foothill Blvd., Upland, California WELLS FARGO branch in the amount of \$1,000.00 to open the new WELLS FARGO account. Two days later, micro-deposits of 24 cents and 32 cents and a withdrawal of the total amount of 56 cents were made from various BOFA accounts to WELLS FARGO and back to BOFA. Plaintiff is informed and believes and accordingly alleges that these types of micro deposits and withdrawals are a well-known red flag for banks of potential fraud. After these micro-deposits and withdrawals were accepted by WELLS FARGO with no warning to Plaintiff of the potential fraud, a \$100,000.00 deposit by wire transfer was made on October 5, 2020 from Plaintiff's BOFA account into the new WELLS FARGO account. During the short period of October 6, 2020 to November 3, 2020, Plaintiff transferred a total of \$592,131.00 into the newly opened WELLS FARGO account. Immediately following each large deposit, Plaintiff entered a WELLS FARGO branch and made huge wire transfers via face-to-face interactions with no questions asked by the WELLS FARGO DEFENDANTS. The majority of the wire transfers were made from the Montclair branch of WELLS FARGO. The wire transfers initiated at WELLS FARGO totaled \$591,000.00 over a short time period, as follows:

<u>DATE</u>	<u>TYPE OF TRANSACTION</u>	<u>AMOUNT</u>
10/06/20	Wire Transfer	-\$48,500.00
10/07/20	Wire Transfer	-\$48,500.00
10/13/20	Wire Transfer	-\$48,500.00
10/14/20	Wire Transfer	-\$49,400.00
10/16/20	Wire Transfer	-\$49,400.00
10/20/20	Wire Transfer	-\$49,400.00
10/21/20	Wire Transfer	-\$49,400.00
10/22/20	Wire Transfer	-\$49,400.00
10/30/20	Wire Transfer	-\$49,400.00
11/02/20	Wire Transfer	-\$49,400.00

<u>DATE</u>	<u>TYPE OF TRANSACTION</u>	<u>AMOUNT</u>
11/02/20	Wire Transfer	-\$49,400.00
11/03/20	Wire Transfer	-\$49,400.00

22. Within less than a month, Plaintiff had deposited \$592,131.00 into his WELLS FARGO account and, with the WELLS FARGO DEFENDANTS' substantial assistance, transferred \$590,100.00 out of his WELLS FARGO account by wire transfer to the scammers. WELLS FARGO also directly charged Plaintiff wiring fees for each of the transfers to the scammers, DOES 51-100, totaling \$615.00 in fees directly taken by WELLS FARGO from Plaintiff as part of the scam.

23. At the end of December 2020, the scammers, DOES 51-100, informed Plaintiff that the "investigation" was complete and his retirement account was rebuilt. When Plaintiff contacted the financial institution in which he had held his retirement account, he was informed the account was depleted. All of Plaintiff's money was gone. When Plaintiff informed WELLS FARGO and BOFA of the scam, neither BOFA or WELLS FARGO credited Plaintiff's accounts the amount of the money wrongfully taken from his accounts, including the fees they directly took as a result of the scam. At the time of the transfers referenced above, Plaintiff lacked the capacity to make the financial decisions described herein because he did not understand or appreciate, to the extent relevant, the probable consequences or the significant risks involved in the decisions, and he was also substantially unable to resist fraud or undue influence at the time.

24. During the throes of the financial elder abuse scam being perpetrated against him, Plaintiff is informed and believes, and accordingly alleges, that the BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS never contacted the local police department or anyone else to investigate why Plaintiff continued to make so many suspicious deposits and withdrawals over such a short period of time and to prevent any further withdrawals.

25. The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS, and each of them, play a critical role in alerting elderly customers and appropriate authorities to suspected elder

1 financial exploitation. This role has received increased attention at the state level, with examples of
 2 “red flags” of financial elder abuse being provided to financial institutions, including but not limited
 3 to the exact activities that occurred with Plaintiff’s account with WELLS FARGO or the Plaintiff’s
 4 trust account with BOFA:

- 5 a. Erratic or unusual banking transactions.
- 6 b. Changes in typical banking patterns.
- 7 c. Frequent large withdrawals.

8 Identifying these “red flags” of financial elder abuse help financial institutions recognize behaviors
 9 or activities that may indicate that financial elder abuse is occurring, at which point the financial
 10 institution has the ability to prevent the financial elder abuse and to protect their elderly customer
 11 from such abuse occurring.

12 26. Each of the subject withdrawals from both Plaintiff’s BOFA account and WELLS
 13 FARGO account as detailed above constituted an erratic and unusual banking transaction for
 14 Plaintiff and an unusual change in his typical banking patterns – including without limitation
 15 making large deposits and sending large wire transfers at BOFA, and opening a new account and
 16 immediately making large deposits and wire transfers at WELLS FARGO, all during a short time
 17 period. Those transfers also constituted “frequent large withdrawals.” Yet, despite all these
 18 hallmarks of financial elder abuse, the BOFA DEFENDANTS and the WELLS FARGO
 19 DEFENDANTS did nothing to stop it – nothing – and instead, were a substantial factor in allowing
 20 the scam to occur. Plaintiff is informed and believes, and accordingly alleges, that the BOFA
 21 DEFENDANTS and the WELLS FARGO DEFENDANTS did not alert the police, did not report
 22 the continued withdrawals to the local police department, or anyone else, and did not escalate the
 23 suspected financial abuse to the operations team or any other division of their respective companies.
 24 Plaintiff is further informed and believes, and accordingly alleges, that the BOFA DEFENDANTS
 25 and the WELLS FARGO DEFENDANTS did not put an alert and/or a hold on Plaintiff’s account at
 26 any time, nor did BOFA require the other co-trustee’s approval of the wire transfers depleting the
 27 trust account. Instead, the BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS just

1 continued to proactively wire money out of Plaintiff's account, substantially assisting in the blatant
2 financial elder abuse of their customer until nearly all of his life savings was gone as a result of the
3 scam, as well as directly taking his funds by charging him mounting fees to do so. In fact, all of the
4 wire transfer withdrawals referenced herein exceeded the \$10,000.00 threshold requiring the filing
5 of a "Currency Transaction Report," and the transactions should have triggered a "Suspicious
6 Activity Report," which must invoke the scrutiny of the BOFA DEFENDANTS' and the WELLS
7 FARGO DEFENDANTS' management. That scrutiny focuses upon (and thereby informs
8 management of) the identity of the customer initiating the suspicious transfers, the amount of the
9 suspicious transactions and the identity of the recipient. Additionally, each month, most of the cash
10 withdrawals were made on the same day or shortly after large deposits of cash into the BOFA and
11 WELLS FARGO accounts. Yet, despite the fact that each suspicious transaction in the sudden series
12 of uncharacteristic transfers was for a very large amount, and many of the withdrawals were made
13 directly after deposits were made, the BOFA DEFENDANTS' and the WELLS FARGO
14 DEFENDANTS' management did nothing to investigate these hallmark red flags of financial abuse
15 against their elderly customer and did nothing to stop the taking of Plaintiff's life savings from his
16 accounts, thereby substantially assisting in the blatant financial elder abuse of Plaintiff by the
17 "scammers," DOES 51-100.

18 27. Scams such as the "tech support scam" and others have become so widespread that
19 Plaintiff is informed and believes, and accordingly alleges that the BOFA DEFENDANTS and the
20 WELLS FARGO DEFENDANTS knew of these scams and were on notice to look out for elderly
21 people being swindled by scams prior to the suspicious wire transfers made by Plaintiff at BOFA
22 and WELLS FARGO branches as described herein. In fact, the number one target of these scams is
23 usually elderly men and women. WELLS FARGO explains that "Scam #1: Tech Support" is a scam
24 where "[i]n this scenario, a scammer posing as a technical support representative calls to claim there
25 is an issue with your computer – for example, that your software is outdated or that you need to
26 confirm your identity – and asks for remote access to resolve the issue. Once you provide this
27 access, the scammer may request payment for technical assistance, install malicious software,

1 change settings to leave your computer vulnerable, and/or steal your financial information.” On its
2 website, WELLS FARGO also acknowledges that “[s]enior citizens are increasingly the target of
3 financial scams. According to the United States Senate Special Committee on Aging, older adults
4 lose approximately \$2.9 billion every year to financial scams. Many scams go unreported often
5 because the victim is humiliated, fears retaliation from scammers, or does not know how to report
6 the crime.” BOFA also acknowledges this scourge on its website, stating “more than \$37 billion is
7 lost each year as a result of the financial exploitation of seniors.”

8 28. WELLS FARGO & COMPANY further tells its customers in its marketing materials
9 that their “commitment” is to “[h]elping you and your loved ones avoid or recover from financial
10 abuse is integral to helping you succeed financially. That’s why we’re committed to investing time,
11 people and resources to help identify, intercept, and investigate incidents of suspected elder and
12 vulnerable adult financial abuse.” However, Plaintiff is informed and believes, and accordingly
13 alleges, that the WELLS FARGO DEFENDANTS did not implement policies and procedures or
14 train employees on any such policies and procedures to “identify, intercept, and investigate” the
15 financial elder abuse it knows exists. Plaintiff is informed and believes, and accordingly alleges that
16 the WELLS FARGO DEFENDANTS and their employees and managing agents who assisted
17 Plaintiff with the withdrawals were not trained in the techniques of identifying and preventing
18 financial elder abuse. The WELLS FARGO DEFENDANTS and their managing agents failed to
19 observe that these large deposits and withdrawals were completely outside an elderly customer’s
20 normal banking patterns and habits. The WELLS FARGO DEFENDANTS and their managing
21 agents also failed to question why Plaintiff was suddenly depositing and withdrawing such large
22 amounts of cash in such a short time period. The WELLS FARGO DEFENDANTS and their
23 managing agents also failed to delay any of the transactions or to get a trusted third party to confirm
24 the transfers. The WELLS FARGO DEFENDANTS and their managing agents also failed to bring
25 what should have been their obvious concerns to a supervisor or manager or to report the continued
26 withdrawals to the local police department or anyone else. The WELLS FARGO DEFENDANTS
27 and their managing agents also failed to put an alert and/or hold on Plaintiff’s account despite what

1 should have been their obvious concerns and despite the ability to do so.

2 29. BOFA tells its customers in its marketing materials that they are “consistently
3 working to keep your accounts and information secure” and that “some of the ways we protect you”
4 includes “protecting against threats with an award-winning cybersecurity team that delivers
5 comprehensive security round-the-clock” and “24/7, real-time monitoring for suspicious account
6 activity” and “alerting you to potential fraud.” However, Plaintiff is informed and believes, and
7 accordingly alleges that the BOFA DEFENDANTS did not implement policies and procedures or
8 train employees on any such policies and procedures to detect, deter or respond to the financial elder
9 abuse it knows exists. Plaintiff is informed and believes, and accordingly alleges that the BOFA
10 DEFENDANTS and their employees and managing agents who assisted Plaintiff with the
11 withdrawals were not trained in the techniques of identifying and preventing financial elder abuse.
12 The BOFA DEFENDANTS and their managing agents failed to observe that these withdrawals
13 were completely outside Plaintiff’s normal banking patterns and habits, and inconsistent with his
14 history. The BOFA DEFENDANTS and their managing agents also failed to question why Plaintiff
15 was suddenly depositing and withdrawing such large amounts of cash in such a short time period.
16 The BOFA DEFENDANTS and their managing agents also failed to delay any of the transactions or
17 to get a trusted third party, or even Plaintiff’s co-trustee, to confirm the transfers. The BOFA
18 DEFENDANTS and their managing agents also failed to put an alert and/or hold on Plaintiff’s
19 account despite what should have been their obvious concerns and despite the ability to do so.

20 30. A 2015 study by True Link Financial revealed that seniors lose \$36.48 billion each
21 year to financial elder abuse. Interagency guidance to financial institutions and professionals has
22 underscored what by then was a well-known problem in the banking community:

23 Recent studies suggest that financial exploitation is the most common form of elder
24 abuse and that only a small fraction of incidents are reported. . . . Older adults are
25 attractive targets because they may have significant assets or equity in their homes.
26 . . . Financial institutions can play a key role in preventing and detecting elder
27 financial exploitation. A financial institution’s familiarity with older adults it
encounters may enable it to spot irregular transactions, account activity, or
behavior. Prompt reporting of suspected financial exploitation to adult protective
services, law enforcement, and/or long-term care ombudsmen can trigger
appropriate intervention, prevention of financial losses, and other remedies.

1 31. It is hard to imagine any financial institution being more familiar with a client, or
2 better positioned during face-to-face transactions with their account holder, to prevent such blatantly
3 irregular transactions, account activity and behavior, than institutions like BOFA and WELLS
4 FARGO and their managing agents were in Plaintiff's case. The BOFA DEFENDANTS and the
5 WELLS FARGO DEFENDANTS and their managing agents actually knew or should have known
6 Plaintiff was caught in the throes of financial elder abuse and that they were not only substantially
7 assisting in the scam, but also directly taking Plaintiff's money via the fees it charged for every
8 transfer Plaintiff made to the scammers. After all, under these circumstances, there was no other
9 plausible explanation for the sudden and numerous deposits and withdrawals to and from Plaintiff's
10 accounts as detailed herein. In fact, when the "scammers" instructed Plaintiff to open an account at
11 California Bank and make wire transfers from that bank, California Bank refused to do so because it
12 had concerns about financial elder abuse. Similarly, when the "scammers" instructed Plaintiff to
13 open an account at U.S. Bank and make wire transfers from that bank, U.S. Bank refused to do more
14 than three wire transfers because it had concerns about financial elder abuse. Although these two
15 banks were alerted to the red flags of financial elder abuse – based on the same information the
16 BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS knew about Plaintiff and had
17 also received from multiple government agencies about financial elder abuse – the BOFA
18 DEFENDANTS and the WELLS FARGO DEFENDANTS simply ignored the red flags and instead,
19 substantially assisted the "scammers" in taking Plaintiff's life savings, directly collecting their own
20 fees from Plaintiff in the process.

21 32. Banks plays a critical role in preventing the financial abuse of older persons by
22 reporting suspicious activity. Financial institutions are the "first line of defense" against financial
23 abuse, by identifying the abuse at its outset, before the elder's assets have been dissipated. No
24 institution is in a better position to observe and report suspicious behavior, such as an unusual
25 volume of banking activity, banking activity inconsistent with a customer's usual habits, or typical
26 red flags of fraud and financial elder abuse. As this case highlights, however, the BOFA
27 DEFENDANTS' and the WELLS FARGO DEFENDANTS' failure to properly train its

1 representatives on policies and procedures has resulted in its representatives assisting the most
 2 blatant financial elder abuse of Plaintiff, by failing to detect, deter, and respond to the financial elder
 3 abuse events.

4 FIRST CAUSE OF ACTION

5 (Financial Elder Abuse against all Defendants)

6 33. Plaintiff refers to, and incorporates herein by reference, all preceding paragraphs into
 7 this cause of action as though fully set forth herein.

8 34. As an "elder" within the meaning of Welfare & Institutions Code § 15610.27,
 9 Plaintiff is entitled to the heightened rights and special statutory protections provided by California's
 10 Elder and Dependent Adult Civil Protection Act ("EADACPA") set forth in Welfare & Institutions
 11 Code § 15600 et seq.

12 35. Under Welfare & Institutions Code § 15610.30(a), "financial abuse" of an elder or
 13 dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes,
 14 appropriates, obtains, or retains real or personal property of an elder or dependent adult for a
 15 wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating,
 16 obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or
 17 with intent to defraud, or both. (3) Takes, secretes, appropriates, obtains, or retains, or assists in
 18 taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or
 19 dependent adult by undue influence, as defined in Welfare & Institutions Code § 15610.70.

20 36. The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS and their
 21 respective managing agents are liable for the financial elder abuse of Plaintiff under Welfare &
 22 Institutions Code § 15610.30 because they actually knew, or should have known, that another
 23 person or entity was engaging in financial elder abuse of Plaintiff and that their conduct as described
 24 in detail herein was likely to be harmful to the elderly Plaintiff. That is, not only should they have
 25 known that they were assisting others' financial elder abuse of Plaintiff, but their knowledge of the
 26 facts stated herein makes it clear that they must have actually known that when they were assisting
 27 Plaintiff in suddenly, uncharacteristically and repeatedly wiring all of his funds out of their

1 respective accounts in a short time period, it was for a wrongful use, that another person was
 2 perpetrating a financial elder abuse scam on Plaintiff as a result, and that this conduct was likely to
 3 be harmful to Plaintiff. Plaintiff is informed and believes, and accordingly alleges that the BOFA
 4 DEFENDANTS and the WELLS FARGO DEFENDANTS had knowledge of the following facts, in
 5 addition to the facts set forth above:

- 6 a. Plaintiff was an 85-year-old elder at the time of the transactions at issue;
- 7 b. In his over 30 years of doing business with BOFA, at the same branch, Plaintiff had
 8 never engaged in repeated wire transfers such as those that suddenly and repeatedly
 9 began occurring in large amounts in September 2020 and continued until he ran out
 10 of money in December 2020;
- 11 c. Plaintiff's WELLS FARGO account was opened with suspicious micro-deposits,
 12 then he immediately made large deposits in, and large wire transfers, out of the
 13 WELLS FARGO account within days until the account was depleted;
- 14 d. These face-to-face wire transfers constituted an erratic and unusual banking
 15 transaction for Plaintiff, each constituted a profound and inherently suspicious
 16 transaction for Plaintiff and each was patently inconsistent for an older adult;
- 17 e. These wire transfers were patently uncharacteristic of Plaintiff's long-time banking
 18 practices at BOFA; and
- 19 f. The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS and their
 20 respective managing agents were on notice to look out for, elderly people being
 21 swindled by increasingly common scams, including "tech support scams" prior to the
 22 suspicious wire transfers made by Plaintiff at BOFA and WELLS FARGO branches
 23 as described herein.

24 37. Despite being in possession of and knowing all these specific facts as set forth herein
 25 that would give anyone a reasonable basis to believe financial elder abuse was occurring, the BOFA
 26 DEFENDANTS and the WELLS FARGO DEFENDANTS and their respective managing agents
 27 knowingly financially abused Plaintiff under Welfare & Institutions Code § 15610.30 by assisting in

1 these cash transactions over and over again in direct, face-to-face transactions with Plaintiff from
2 September 2020 through December 2020, totaling over \$2,000,000.00, and by directly taking and
3 retaining wire fees from Plaintiff each time in the process. The BOFA DEFENDANTS' and the
4 WELLS FARGO DEFENDANTS' conduct as described in detail here was a substantial factor in
5 causing harm to Plaintiff. But for the ongoing and substantial assistance of the BOFA
6 DEFENDANTS and the WELLS FARGO DEFENDANTS, this financial abuse scam against
7 Plaintiff could not have been effected by the scammers. As set forth in detail herein, the BOFA
8 DEFENDANTS and the WELLS FARGO DEFENDANTS openly shirked their professional
9 responsibilities to their elderly customers, including the clearly elderly Plaintiff. Time and time
10 again during the financial exploitation of Plaintiff, the BOFA DEFENDANTS and the WELLS
11 FARGO DEFENDANTS consciously and repeatedly turned a blind eye to the multiple red flags
12 raised by these uncharacteristic, frequent and large transfers. The BOFA DEFENDANTS and the
13 WELLS FARGO DEFENDANTS consciously failed to follow their own policies and procedures to
14 protect Plaintiff from financial elder abuse, despite knowing of the presence of numerous known red
15 flags for financial elder abuse, instead repeatedly wiring away the life savings of an elderly man
16 clearly in the throes of a financial elder abuse scam.

17 38. Given the knowledge of all of the foregoing by the BOFA DEFENDANTS and the
18 WELLS FARGO DEFENDANTS and their respective managing agents, the BOFA DEFENDANTS
19 and the WELLS FARGO DEFENDANTS and their respective managing agents committed financial
20 abuse under Welfare & Institutions Code § 15610.30 by assisting in the financial abuse of Plaintiffs
21 by DOES 51-100 and by directly taking and retaining wire fees from Plaintiff each time in the
22 process. Even with their knowledge of the above, the BOFA DEFENDANTS and the WELLS
23 FARGO DEFENDANTS and their respective managing agents simply turned a blind eye and
24 callous heart to the outrageous pillaging of Plaintiff's financial security, ignoring the stunning
25 frequency, amounts and volume of withdrawals and the red flag of repeated wire transfer
26 withdrawals by an elder who had never done anything similar and openly shirking its professional
27 responsibilities to its elderly customers, including Plaintiff. By assisting in taking, secreting,

1 appropriating, obtaining or retaining Plaintiff's property rights for a wrongful use or with intent to
2 defraud, or both, as set forth herein, and by directly taking and retaining wire fees from Plaintiff
3 each time in the process, BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS and
4 their respective managing agents engaged in financial elder abuse within the meaning of Welfare &
5 Institutions Code § 15610.30. The BOFA DEFENDANTS and the WELLS FARGO
6 DEFENDANTS and their respective managing agents knew or should have known that this conduct
7 was likely to be harmful to Plaintiff. The BOFA DEFENDANTS and the WELLS FARGO
8 DEFENDANTS and their respective managing agents, and each of them, knew or should have
9 known that the numerous withdrawals were a result of a financial elder abuse scam, and that their
10 customer, a man who was clearly elderly, was particularly susceptible to undue influence.
11 EADACPA defines undue influence as "excessive persuasion that causes another person to act or
12 refrain from acting by overcoming that person's free will and results in inequity. ..." (Welf. & Inst.
13 Code § 15610.70.)

14 39. Yet despite knowing all of this information, not once did the BOFA DEFENDANTS
15 or the WELLS FARGO DEFENDANTS warn their customer who had come into their branch for a
16 face-to-face transaction that he was in the throes of a financial elder abuse scam, nor did they ever
17 attempt to lead Plaintiff away from the scam even though they had the ability to do so when he was
18 personally inside their bank branch interacting with them in a face-to-face transaction. The BOFA
19 DEFENDANTS and the WELLS FARGO DEFENDANTS did not do anything to even suggest to
20 Plaintiff that he may be the victim of a financial elder abuse scam, how to avoid such a scam or
21 what to do in case a scam had occurred. And when Plaintiff became aware of the scam and told the
22 BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS about it after all of his money
23 had been transferred, the BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS further
24 abused him directly by failing to credit his account the amount of the money wrongfully obtained
25 from him, and therefore, possess money belonging to him in violation of Welfare & Institutions
26 Code §15610.30. Under Welfare & Institutions Code § 15657.6, a person or entity who takes,
27 secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or

1 retaining the real or personal property of an elder when the elder lacks capacity pursuant to Section
 2 812 of the Probate Code, or is of unsound mind, but not entirely without understanding, pursuant to
 3 Section 39 of the Civil Code, shall, upon demand by the elder or a representative of the elder, return
 4 the property and if that person or entity fails to return the property, the elder shall be entitled to the
 5 remedies provided under Welfare & Institutions Code § 15657.5, including attorney fees and costs.

6 40. DOES 51-100 are liable for the financial elder abuse of Plaintiff under Welfare &
 7 Institutions Code § 15610.30 as set forth herein for taking, secreting, appropriating, obtaining,
 8 and/or retaining real or personal property of Plaintiff for a wrongful use or with intent to defraud, or
 9 both, and for taking, secreting, appropriating, obtaining, and/or retaining real or personal property of
 10 Plaintiff by undue influence. DOES 51-100 exerted undue influence on Plaintiff to entice him to
 11 transfer his funds to them. The Elder Abuse Act defines undue influence as “excessive persuasion
 12 that causes another person to act or refrain from acting by overcoming that person's free will and
 13 results in inequity. ...” (Welf. & Inst. Code § 15610.70.) Once Plaintiff was persuaded to trust
 14 them, DOES 51-100 took over \$2,000,000.00 from Plaintiff in the wire transfers he made from
 15 BOFA and WELLS FARGO, as outlined in detail above. DOES 51-100's taking, secreting,
 16 appropriating, obtaining or retaining Plaintiff's property rights for a wrongful use or with intent to
 17 defraud, or both, or assisting in such conduct, constitutes financial elder abuse within the meaning
 18 of Welfare & Institutions Code § 15610.30. DOES 51-100 engaged in such conduct either directly
 19 or assisted others in such conduct within the meaning of Welf. & Inst. Code § 15610.30, and knew
 20 or should have known that this conduct was likely to be harmful to Plaintiff.

21 41. The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS failed to
 22 create and/or follow policies and protocols to protect its elderly customers, including Plaintiff, from
 23 financial elder abuse. The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS
 24 completely ignored the blatant signs that Plaintiff was being financially abused, until he had lost
 25 nearly all of his life savings.

26 42. The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS failed to
 27 ensure its employees were properly trained to recognize and prevent financial elder abuse and failed

1 to monitor and supervise its employees to ensure they were complying with the company's policies.
 2 The BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS failed to follow the standard
 3 of care in the financial industry regarding training and monitoring for financial elder abuse. The
 4 BOFA DEFENDANTS and the WELLS FARGO DEFENDANTS and their respective managing
 5 agents knew or should have known that failing to follow the standard of care in the industry to
 6 monitor for and protect against financial elder abuse, would subject Plaintiff to the foreseeable risk
 7 of undue influence and financial elder abuse.

8 43. As a direct and proximate result of wrongful conduct of Defendants, and each of
 9 them, as alleged above, Plaintiff has suffered economic damages, as well as mental distress,
 10 anguish, upset, humiliation, fear and anxiety all to his general damage in a sum to be established
 11 according to proof.

12 44. Due to the conduct, acts and omissions of Defendants, and each of them, as alleged
 13 above, in addition to all other remedies provided by law, Plaintiff is entitled to recover reasonable
 14 attorney's fees and costs for financial elder abuse pursuant to Welfare & Institutions Code § 15657.5.

15 45. By the conduct, acts and omissions of Defendants, and each of them, as alleged
 16 above, Defendants are guilty of recklessness, fraud, oppression, and/or malice. The specific facts
 17 set forth above show a disregard of the high probability that Plaintiff would be injured. Defendants'
 18 conduct constituted oppression, fraud, and malice in the commission of the financial elder abuse,
 19 and Plaintiff is entitled to recover damages for the sake of example and by way of punishing
 20 Defendants for financial abuse pursuant to Civil Code § 3294.

21 Wherefore, Plaintiff seeks relief as set forth below.

22 **SECOND CAUSE OF ACTION**

23 **(Unlawful, Unfair and Deceptive Business Practices**

24 **[Business & Professions Code § 17200 *et seq.*] against WELLS FARGO and BOFA Only)**

25 46. Plaintiff refers to, and incorporates herein by reference, all preceding paragraphs into
 26 this cause of action as though fully set forth herein.

27 47. Business & Professions Code § 17200 *et seq.* prohibits any person from engaging in

1 unfair competition as that term is defined in Business and Professions Code § 17200, which includes
2 any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
3 misleading advertising and any act prohibited by Chapter 1 (commencing with § 17500) of Part 3 of
4 Division 7 of the Business & Professions Code.”

5 48. Plaintiff is informed and believes, and accordingly alleges, that WELLS FARGO and
6 BOFA financially abused Plaintiff when they assisted the scammers in obtaining nearly all of
7 Plaintiff’s life savings totaling over \$2,000,000.00 and when they directly took wire fees from
8 Plaintiff each time they did so, by failing to follow policies and procedures to prevent financial elder
9 abuse, when they knew or should have known that the numerous and repeated wire transfer
10 withdrawals from Plaintiff’s accounts were likely for a wrongful purpose and the result of financial
11 elder abuse.

12 49. Plaintiff is informed and believes, and accordingly alleges, that WELLS FARGO and
13 BOFA violated Welfare & Institutions Code § 15610.30 when it assisted in the taking, secreting,
14 appropriating, obtaining or retaining of Plaintiff’s funds, totaling over \$2,000,000.00, for a wrongful
15 use or with an intent to defraud, or both, and when it took and retained wire transfer fees from
16 Plaintiff for doing so as part of the scam as set forth herein.

17 50. Plaintiff is informed and believes, and accordingly alleges that the violation of
18 Welfare & Institutions Code § 15610.30 alleged herein constituted an unlawful business practice in
19 violation of Business & Professions Code § 17200 et seq.

20 51. When Plaintiff informed WELLS FARGO and BOFA and its managing agents of the
21 scam resulting in multiple large wire transfers, both WELLS FARGO and BOFA failed to credit
22 Plaintiff’s accounts the amount of the money wrongfully took from his accounts, including the fees
23 charged by, and directly taken by, BOFA and WELLS FARGO for each of the wire transfers, in
24 violation of Welfare & Institutions Code § 15610.30, and therefore possess money belonging to him
25 for which he has a right to restitution under Business and Professions Code § 17200.

26 52. As a result of WELLS FARGO’s and BOFA’s unfair competition and unlawful
27 business practices, as alleged herein, Plaintiff has suffered injury in fact and lost money or property.

1 53. Plaintiff requests that this Court enter such orders or judgments as may be necessary
2 to restore to Plaintiff all money which may have been acquired by means of such unlawful, unfair
3 and/or deceptive business practices, as provided in Business & Professions Code § 17203, and for
4 such other relief as set forth below.

5 Wherefore, Plaintiff seeks relief as set forth below.

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff hereby requests a jury trial.

8 **PRAYER FOR RELIEF**

9 WHEREAS, Plaintiff prays judgment against Defendants, and each of them, as follows:

- 10 1. For general damages according to law and proof;
- 11 2. For special damages according to law and proof;
- 12 3. For costs of suit;
- 13 4. For attorneys' fees;
- 14 5. For statutory damages;
- 15 6. For restitution pursuant to Business & Professions Codes § 17203 against WELLS
16 FARGO and BOFA only;
- 17 7. For injunctive relief pursuant to Business & Professions Codes § 17203 against
18 WELLS FARGO and BOFA only;
- 19 8. For treble damages pursuant to Civil Code § 3345;
- 20 9. For punitive damages;
- 21 10. For prejudgment interest according to law; and
- 22 11. For such other and further relief as the court may deem proper.

23 Dated: May 21, 2021

STEBNER AND ASSOCIATES

24
25 By: 

26 Kathryn A. Stebner
27 Deena K. Zacharin
 Attorneys for Plaintiff